

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Acceleration of Broadband Deployment by)	
Improving Wireless Facilities Siting Policies)	WT Docket No. 13-238
)	
Acceleration of Broadband Deployment:)	
Expanding the Reach and Reducing the Cost of)	WC Docket No. 11-59
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	
)	
Amendment of Parts 1 and 17 of the)	
Commission's Rules Regarding Public)	RM-11688 (terminated)
Notice Procedures for Processing Antenna)	
Structure Registration Applications for)	
Certain Temporary Towers)	
)	
2012 Biennial Review of)	
Telecommunications Regulations)	WT Docket No. 13-32

COMMENTS OF BREVARD COUNTY, FLORIDA

Brevard County, Florida respectfully submits these Comments in response to the Federal Communications Commission's September 26, 2013, Notice of Proposed Rule Making (NPRM), published in the Federal Register on December 5, 2013. Through these comments, Brevard urges the Commission to refrain from regulating local wireless facility siting practices. Brevard has developed considerable expertise applying its policies to protect and further public safety, economic development, compatible land use practices and other community interests. By adopting rules in this area, the Commission will disrupt this process at substantial cost to local taxpayers and to the local economy. A basic respect for federalism, a fair reading of the Constitution and the Telecommunications Act, and an honest assessment of the Commission's limited expertise on local land use matters require regulatory restraint.

SITING WIRELESS FACILITIES ON PUBLIC PROPERTY

Brevard is currently developing a wireless siting program that will streamline and expedite the approval process to increase “speed to market” for communications providers. The ultimate goal is to enact a process that provides siting incentives based on local land use compatibility policies and future coverage needs, consistent with the local governing authority preserved in § 332 of the Telecommunications Act (47 USC § 332(c)(7)(A)). These new regulations are anticipated to encourage location on public parcels that are identified and reviewed in a public hearing process. The industry would not be mandated to locate new facilities on public property and may pursue a privately owned site if a suitable public site is not available. This approach is neither obstructionist or discriminatory. All regulations would apply equally to all applicants.

The existing siting process only allows for piecemeal consideration of a single new facility in a quasi-judicial hearing. This adversarial process can become difficult and frustrating for both the industry and the community. In effort to pursue a more balanced approach, Brevard believes that a future planning and policy-making process, similar to planning for public service infrastructure needs and services such as roads, utilities, and other capital improvements, would better serve all interests.

PCIA urges the Commission to enact a rule establishing that local ordinances which adopt a wireless siting preference for public property over private property are “unjustly discriminatory” and should be prohibited. Setting aside the fact that the requested action would require the Commission to abrogate the preservation of local zoning authority embodied in §332(c)(7)(A), PCIA’s arguments in support of such a rule are illogical. Section 332(c)(7)(B)(i) provides that local regulations cannot “unreasonably discriminate among providers of functionally equivalent services” or “have the effect of prohibiting personal wireless services”. A local preference ordinance is neither unreasonable discriminatory or prohibitive. Such an ordinance would only encourage siting on public lands, consistent with § 332(c)(7), but would not mandate, as alleged, siting on public land. Generally, if an applicant demonstrates that a public site is unsuitable for its network, it would then pursue a facility on private property.

PCIA’s request for an expansive interpretation of § 332(c)(7)(B)(i) should also be rejected as contrary to established rules of legal interpretation of preemption statutes. Pursuant to *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571,578 (9th Cir. 2008) *cert. den.* 557 U.S. 935 (2009), express preemption statutes, including §§ 253(a) and 332(c)(7)(B)(i) of the Telecommunications Act,

must be interpreted narrowly. Unless an ordinance can be shown on its face to actually create an outright or effective prohibition on wireless services or unreasonably discriminate among service providers, it's consistent with the local government's authority preserved in § 332(c)(7)(A).

The Telecommunications Act allows Brevard the ability to conduct land use planning for its own property to foster managed development of wireless infrastructure in a manner that addresses industry needs while balancing the public's interest in preventing the unnecessary proliferation of cell towers and ensuring compatible land uses. This approach is intended and designed to increase access to wireless services. The Commission should reject requests to ban local preference ordinances.

SHOT CLOCK ISSUES

Florida Statutes provide stricter "shot clock" time frames for decisions on applications for new wireless facilities (90 business days from date of completed application) and collocations (45 business days from same). Sec. 365.172(12)(a), Fla. Stat. There is no specific time limitation on the issuance of permits for the location of DAS facilities in public rights of way. Sec. 334.407, Fla. Stat. This is likely due to a practical difference in the timing of project development and permitting that argues against subjecting DAS installation to nationwide shot clock. With DAS installation, the discussion with the entities that manage and have interests in the right of way about potential locations typically begins at the time the permit application is submitted where, in the case of a proposed wireless facility, that discussion has already occurred with the property owner before an application is filed with the local government. Given this inherent difference, Brevard recommends that the Commission reject the industry's request to treat DAS installations the same as wireless facilities.

Brevard is concerned about the "deemed granted" remedy requested by the wireless industry for two reasons. The first is that the question of when the shot clock began, i.e. the date of the completed application, can be subject to dispute¹. This factual dispute can only be resolved by a judge under expedited review or petition to the Commission. § 332(c)(7)(B)(v). Authorizing an applicant to proceed to construction without any additional review is contrary to the Telecommunications Act. The second concern is the intended effect of a "deemed granted" remedy. Even if a public hearing decision was not timely issued

¹ On the subject of the NPRM question regarding a need to define when an application is considered complete, it's doubtful that a one-size-fits-all definition is feasible given the variation of permitting processes across the country or that a single standard would be consistent with the preservation of local authority in §332(c)(7)(A).

regarding the location and development standards, the structure is still subject to administrative review for building code and statutory compliance. Allowing an applicant to proceed without the necessary administrative reviews compromises public safety.

INTERPRETATION OF SECTION 6409(a) OF THE MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

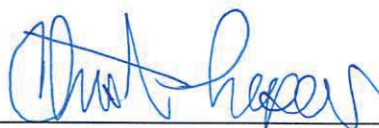
Brevard concurs with and adopts the comments and recommendations of the Intergovernmental Advisory Committee (IAC) to the Federal Communications Commission issued on July 31, 2013, Advisory Recommendation No. 2013-9.

POSSIBLE COMMISSION ACTION

Brevard strongly urges the Commission to refrain from further regulating local wireless facility placement processes. These procedures involve highly fact-specific matters which turn on local geography, local environmental and historical land use practices, local traffic and economic development patterns and other significant community interests and circumstances. Imposing a one-size-fits-all federal regulatory scheme would create unnecessary costs for our community and potentially undermine valid local public policies. Should the Commission feel compelled to act in this area, it should limit itself to developing voluntary programs, model ordinances and educational activities that facilitate public/private partnerships to encourage timely deployment of needed communications facilities in a way that is consistent with local public interests. In addition, Brevard encourages the Commission to consider that state and local governments want to work cooperatively to ensure that broadband deployment and wireless facilities siting and done in a safe, conscientious and nondiscriminatory manner.

Respectfully submitted,

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